IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 16TH AUGUST 2007 / 25TH SRAVANA 1929

WP(C).No. 24920 of 2007(N)

CMA.149/2006 of ADDL.DISTRICT COURT, THRISSUR
OS.860/2001 of I ADDL.SUB COURT, THRISSUR
(IA.1404/05)

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PETITIONER:

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1. E.D.ANTONY, AGED 54 YEARS,
   S/O.IRIMBAN DEVASSY, MUKKATTUKARA DESOM,
   NETTISSERY VILLAGE, THRISSUR.

2. ELSY, AGED 48 YEARS,
   W/O.IRIMBAN ANTONY, MUKKATTUKARA DESOM,
   NETTISSERY VILLAGE, THRISSUR.

3. REJI, AGED 29 YEARS,
   W/O.IRIMBAN ANTONY, MUKKATTUKARA DESOM,
   NETTISSERY VILLAGE, THRISSUR.

BY ADV. SRI.P.SANTHOSH (PODUVAL)
SMT.R.RAJITHA

RESPONDENTS:

N.L.VARGHESE, S/O.NAYANKARA LONAPPAN,
NELLANKARA DESOM, NETTISSERY VILLAGE, THRISSUR.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 16/8/07, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J.

WP(C).No.24920 OF 2007 N

Dated this the 16th August, 2007.

JUDGMENT

This writ petition is filed challenging the orders passed by the learned Subordinate Judge and Additional District Judge, Thrissur in a matter of setting aside an ex parte decree. The learned counsel for the writ petitioner submits before me that an ex parte decree was passed on 21.2.2005 and the party has filed an application to set aside the ex parte decree on 25.2.2005 or in other words the defendant has taken prompt action to get the decree set aside immediately after the decree has been passed. But the court below took almost an year to dispose of that I.A and the court directed the restoration on deposit of Rs.1 lakh within a period of thirty days and in the absence of deposit within 30 days dismissed the application with a cost of Rs.2,000/-. The appellate court did not lean much in favour of the present writ petitioner but granted a sigh of relief by reducing the cost from Rs.2,000/- to Rs.500/-. The main point to be considered is regarding the direction to deposit Rs.1 lakh as a condition precedent to set aside the ex parte decree. I am conscious of the fact that there are decisions of this court wherein the court has held that there is no impropriety in directing the parties to deposit

some portion of the amount as a security for the plaintiff. But the court has to take into consideration the total aspects before imposing such conditions. Here is a case where the defendant has moved the court within a period of four days to set aside the ex parte decree. One cannot hold him guilty for the same. It was the court which took time to dispose of the matters. By the time the interest has swelled and it has almost come to Rs.9 lakhs. What has to be looked into in these type of cases is the conduct of the party approaching the court and also the attitude in prosecuting the case. I feel the court below has been little harsh on the writ petitioner. There can be some reduction in the amount to be furnished by way of security. I therefore modify the order of the trial court and direct the present writ petitioner to furnish security for a sum of Rs.50,000/- as a condition for setting aside the ex parte decree. I do not propose to interfere with the reduction of costs of Rs.500/- though it is on another head. The writ petitioner shall furnish the security within a period of six weeks from today and the court after giving notice to the decree holder can accept the security if sufficient, restore the case to file after setting aside the ex parte decree and then proceed with the matter in

accordance with law. Writ petition is disposed of accordingly.

M.N.KRISHNAN
Judge

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